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RAJA KUMAR ANDY & ORS

v.

NAMGAYEE ALAGAN & ANOR

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COURT OF APPEAL, PUTRAJAYA
SURIYADI HALIM OMAR JCA
HELILIAH MOHD YUSOF JCA
WAN ADNAN MUHAMAD JCA
[CIVIL APPEAL NO: W-02-1223-2008]

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10 MARCH 2009

CIVIL PROCEDURE: *Appeal - Appeal against judgment where sentence deferred - Whether judgment appealable - Courts of Judicature Act 1964, ss. 3, 50, 67, 68*

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This was the first plaintiff's application by way of a notice of motion to strike out the defendants' notice of appeal. The plaintiff claimed that the judgment was not appealable as sentencing was deferred to a later date and the defendants filed the appeal before

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sentence was given. The facts showed that the judgment was delivered after a full trial on committal proceedings against the defendants who were alleged to have breached the terms of an injunction obtained by the plaintiff.

Held (dismissing the application)

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Per Suriyadi Halim Omar JCA:

(1) The matters before the learned judge, whether the injunction application or the committal proceedings, were civil matters but the plaintiff was subjected to a criminal burden to succeed

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in the latter. As the parties agreed that any allusion to criminal provisions would be ruled out, s. 67 of the Courts of Judicature Act 1967 ('the Act') took center stage. The question to be resolved was whether the judicial decision meted down by the learned judge prior sentencing, qualified as

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"judgment" or "order" in view of s. 67. (para 13)

(2) The word "judgment" or "order" was regularly used in courts but not defined in the Act. Section 67 of the Act empowered the courts to interpret and figure out whether a particular

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judicial decision would fall within the ambit of the phrase from the surrounding circumstances. The interpretation must fall within the spirit of s. 67 and the framework of the Act. (paras 14 & 17)

(3) As the words in s. 67 of the Act were precise and unambiguous, effect should be given to the ordinary or technical meaning of the words in the context of the Act. Those words were not just mere popular words used in normal parlance but technical words. They must mean more than a concluded opinion but carrying a judicial decision that had a legal effect. In the present case, the finding of the learned judge that the defendants committed contempt after a full trial was without doubt a judgment in the context of s. 67. The need to allude to the terminology of "decision" in s. 3 did not arise as s. 67 was devoid of it. It followed that the decision of the learned judge was appealable. (paras 18 & 20)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah permohonan plaintif pertama melalui notis usul untuk membatalkan notis rayuan defendan-defendan. Plaintif mendakwa bahawa penghakiman yang dirayui defendan-defendan tidak boleh dirayukan kerana penghukuman berkaitan telah ditangguhkan ke satu tarikh selepas itu dan responden-responden memfailkan rayuan sebelum penghukuman tersebut dapat ditentukan. Fakta menunjukkan bahawa penghakiman tersebut disampaikan selepas perbicaraan penuh ekoran prosiding komital terhadap defendan-defendan kerana melanggar terma-terma perintah injunksi yang diperolehi oleh plaintif.

Diputuskan (menolak permohonan)
Oleh Suriyadi Halim Omar HMR:

(1) Perkara-perkara di hadapan yang arif hakim, sama ada injunksi atau prosiding komital, merupakan perkara-perkara sivil tetapi beban bukti dalam prosiding komital merupakan beban bukti jenayah yang terpakai plaintif untuk berjaya dalam prosiding komital itu. Namun demikian, disebabkan pihak-pihak bersetuju bahawa mana-mana peruntukan jenayah tidak terpakai, maka s. 67 Akta Kehakiman 1967 ('Akta tersebut') mesti diberi kepentingan.

(2) Perkataan "judgment" atau "order" sering terpakai di mahkamah-mahkamah tetapi tidak ditakrifkan dalam Akta tersebut. Seksyen 67 Akta memberi kuasa kepada mahkamah-mahkamah untuk mentafsir dan memastikan sama ada sesuatu keputusan kehakiman termasuk dalam lingkungan frasa tersebut

daripada keadaan sekelilingnya. Pentafsiran tersebut mesti termasuk dalam lingkungan makna s. 67 dan rangka Akta tersebut.

(3) Disebabkan perkataan-perkataan dalam s. 67 Akta jelas dan tidak taksa, kesan mesti diberikan kepada makna biasa atau teknikal perkataan-perkataan dalam konteks Akta tersebut. Perkataan-perkataan tersebut bukan hanya merupakan perkataan yang lazim terpakai dalam gaya bahasa harian tetapi perkataan-perkataan yang teknikal. Bukan sahaja, perkataan-perkataan tersebut mesti membawa maksud melebihi pendapat yang disimpulkan, bahkan juga membawa keputusan kehakiman yang sah dari segi undang-undang. Dalam kes semasa, tidak diragui lagi bahawa dapatan yang arif hakim yang perayu-perayu telah menghina mahkamah selepas perbicaraan penuh merupakan penghakiman dalam konteks s. 67. Tiada keperluan untuk merujuk kepada istilah "decision" dalam s. 3 kerana s. 67 tiada perkataan tersebut. Ianya mengikut bahawa keputusan yang arif hakim boleh dirayui.

Case(s) referred to:

Auto Dunia Sdn Bhd v. Wong Sai Fatt & Ors [1995] 3 CLJ 485 FC ***(refd)***

Dato' Seri Anwar Ibrahim v. PP [1999] 1 CLJ 537 CA ***(refd)***

Kheng Chwee Lian v. Wong Tak Thong [1983] 2 CLJ 191; [1983] CLJ (Rep) 195 FC ***(refd)***

Tan Kim Leng & Anor v. Chong Boon Eng & Anor [1974] 1 LNS 167 ***(refd)***

Tycoon Realty Sdn Bhd v. Senwara Development Sdn Bhd [1999] 3 CLJ 377 CA ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, ss. 3, 50, 67, 68(1)(a)

Rules of the High Court 1980, O. 52

For the 1st plaintiff/respondent - T Jayadeva; M/s Syarikat Radhakrishnan
For the defendants/appellants - CY Chong; M/s CY Chong & Assoc

[Appeal from High Court, Kuala Lumpur; Suit No: S5-22-1879-2004]

Reported by Usha Thiagarajah

JUDGMENT

Suriyadi Halim Omar JCA:

[1] A notice of motion hereinafter referred to as encl. 5a was dismissed unanimously with costs by this panel. This enclosure is an application by the first plaintiff (hereinafter referred to as the applicant, for an order that the notice of appeal dated 17 October 2008 filed by the respondent, be struck out and the appeal dismissed with costs to be paid forthwith.

[2] The grounds of the application are quite straight forward in that on 28 December 2004 the applicant had commenced an action against the respondent (her son) for fraud, breach of trusts and the return of property known as No. 4, Jalan Ibu Kota 3, Taman Ibu Kota, Jalan Gombak, Kuala Lumpur (the said property). An injunction was granted in her favour restraining the respondent or his agents from preventing her entry into the said property. The respondent aided by the second and third appellants, subsequently were alleged to have deliberately breached the terms of the injunction.

[3] This breach led to committal proceedings founded on contempt of court being initiated by the applicant against the respondent and the other two aiders. Some of the allegations revolved on repeated verbal abuses against her since 3 October 2005, disconnection of electricity supply to the said property where she resided, causing discomfort, disturbance, minor physical abuse and the like, much to her chagrin. On 30 September 2008, the learned judge after hearing submissions of the contesting parties ruled that the charges of contempt against the respondents had been established beyond reasonable doubt. Instead of promptly sentencing them, the learned judge deferred it to 8 January 2009. Being dissatisfied the respondents filed an appeal against the judgment even before the sentence was meted down. On 11 February 2009 the respondent was sentenced to a fine of RM3,000 and in default a two months imprisonment. The learned judge subsequently admonished the other two contemnors.

[4] Believing that the judgment was not appealable pursuant to s. 67 of the Courts of Judicature Act 1964 (the Act), and the appeal thus a nullity and an abuse of process of the court, the applicant filed encl. 5a. She also believed that this appeal was filed to protract and delay the proceedings.

[5] The respondent at the very outset denied that the appeal filed was an attempt to delay the proceedings. On the issue that the appeal was a nullity, the respondent ventilated that the judgment pronounced on 30 September 2008 was a judgment made after trial, with evidence adduced and submissions made, hence falling under s. 67 of the Act. The said judgment was therefore appealable let alone he was the very person aggrieved and prejudiced by its pronouncement.

[6] To resolve the matter at hand it is relevant that this panel identify first the pertinent procedure under which the proceedings fall under, whether criminal or civil jurisdiction. It will become obvious as we explain along.

[7] It is elementary that a court is a creature of statute and the right to appeal is subject to statutory limitations and restrictions hence the need for the respondent to bring himself within the enabling provisions (*Auto Dunia Sdn Bhd v. Wong Sai Fatt & Ors* [1995] 3 CLJ 485). The relevant provision for our consideration now is s. 67 of the Act and it reads:

Jurisdiction to hear and determine civil appeals

> 67(1) The Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of any High Court in any civil cause or matter, whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to this or any other written law regulating the terms and conditions upon which such appeals shall be brought ... (emphasis added)

[8] A reading of the above provision shows that jurisdiction is conferred upon the Court of Appeal 'to hear and determine appeals from any judgment or order of any High Court in any civil cause or matter'. Even though a wide jurisdiction is conferred upon the Court of Appeal to hear and determine appeals from any judgment or order, it may be fettered by certain requirements in the like provided for by s. 68(1)(a) of the Act. As an example, under this section the subject matter to be appealed cannot be less than RM250,000, a ceiling demanded by Parliament in order to avoid trifling claims. For better appreciation of the matter at hand s. 68 is reproduced and it reads:

68(1) No appeal shall be brought to the Court of Appeal in any of the following cases:

(a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;

(b) where the judgment or order is made by consent of parties;

(c) where the judgment or order relates to costs only, which by law are left to the discretion of the Court, except with the leave of the Court of Appeal; and

(d) where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final.

(2) (Repealed by Act A886).

(3) No appeal shall lie from a decision of a Judge in Chambers in a summary way on an interpleader summons, where the facts are not in dispute, except by leave of the Court of Appeal, but an appeal shall lie from a judgment given in court on the trial of an interpleader issue.

[9] Reading the above section it is obvious that the above fetters are inapplicable for the appeal connected to this application. Shorn of all frills, for purposes of this application, we were required to consider whether the appellant was fettered to file the appeal when only a judgment, but without the sentence having been pronounced. Despite that 'unfinished order', it is a fact that a perfected order dated 30 September 2008 was extracted from the court, and it reads as follows:

... **Maka pada hari ini adalah diperintahkan** bahawa:

(i) plaintif pertama telah berjaya membuktikan kesnya terhadap defendan pertama di luar keraguan yang munasabah bahawa defendan pertama telah menghina mahkamah berkenaan dengan kesemua dakwaan yang dibuat di dalam perenggan 1(i) hingga (iv) Notis Usul bertarikh 30 Januari 2008 di Lampiran (62);

(ii) plaintif pertama telah berjaya membuktikan kesnya terhadap Renuka a/p Venugopal di luar keraguan yang munasabah bahawa Renuka a/p Venugopal telah menghina mahkamah apabila membantu dan mendorong defendan pertama

melanggar Perintah Mahkamah bertarikh 3 Oktober 2005 yang mana Renuka a/p Venugopal mempunyai notis berkaitan dengan dua dakwaan sebagaimana yang dinyatakan di dalam Perenggan 2(i) dan (ii) Notis Usul bertarikh 30 Januari 2008 di Lampiran (62);

(iii) plaintif pertama telah berjaya membuktikan kesnya terhadap Sarah Jane Gonzalvez di luar keraguan yang munasabah bahawa Sarah Jane Gonzalvez telah menghina mahkamah apabila membantu dan mendorong defendan pertama melanggar Perintah Mahkamah bertarikh 3 Oktober 2005 yang mana Sarah Jane Gonzalvez mempunyai notis berkenaan dengan dakwaan yang dinyatakan di bawah Perenggan 3 Notis Usul bertarikh 30 Januari 2008 di Lampiran (62);

(iv) penghukuman kerana menghina mahkamah ke atas defendan pertama, Renuka a/p Venugopal, dan Sarah Jane Goncalvez akan dilaksanakan pada 8 Januari 2009;

Dan akhirnya adalah diperintahkan bahawa kos bagi permohonan ini akan ditanggung oleh defendan pertama, Renuka a/p Venugopal, dan Sarah Jane Gonzalvez kepada plaintif pertama dalam Perenggan 4 Notis Usul bertarikh 30 Januari 2009 di Lampiran (62).

Bertarikh pada 30 haribulan September 2008 ...

[10] There was some confusion caused at the outset by the applicant's argument as when her counsel insisted that s. 67 of the Act must be read with the terminology of "decision" as legislated under s. 3 of the Act. This approach was canvassed even though the Act has spelt out or delineated the areas of jurisdiction for the Court of Appeal for criminal and civil cases. A scrutiny of the Act, in particular s. 50, which deals with the court's jurisdiction for criminal matters, the word employed there speaks of any decision made by the High Court. This provision reads thus:

50. Jurisdiction to hear and determine criminal appeals

(1) Subject to any rules regulating the proceedings of the Court of Appeal in respect of criminal appeals, the Court of Appeal shall have jurisdiction to hear and determine any appeal against any decision made by the High Court:

(a) in the exercise of its original jurisdiction; and

(b) in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by the Sessions Court.

[11] The word 'decision' is not found in s. 67 of the Act though defined in s. 3. It is defined as follows:

> means judgment, sentence or order but does not include any ruling in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties ...

[12] Judging from the submission of counsel for the applicant, the judgment of the learned judge must have been construed as interlocutory in nature and thus not appealable. Even though it was final and conclusive as to the fact of having committed the contempt, it was ventilated that it was not a "decision" that fell within s. 50 and hence not appealable (*Dato' Seri Anwar Ibrahim v. PP* [1999] 1 CLJ 537).

[13] Not being satisfied with the meshing up of jurisdiction approach undertaken by the applicant the panel probed further. Parties agreed that to establish the essence of contempt of court, the required burden of proof is beyond reasonable doubt although the procedure to adhere to is that of civil procedure. It was undisputed that leave had been obtained in this case in accordance with O. 52 of the Rules of the High Court 1980, with the leave application supported by a statement setting out the required details, as required by civil procedure. It was also never disputed that the initial injunctive matter, which led to the committal proceedings, arose out of a civil matter. In a nutshell parties eventually agreed that the matters before the High Court judge, be they the injunction application or the committal proceedings, were civil matters but subjecting the applicant to a criminal burden in order to succeed in the latter matter. The effect of the agreement was that any allusion to criminal provisions would have to be ruled out. We have no disagreement with the factual and legal stance of the parties.

[14] With parties agreeing to the matter being subject to civil rules and civil procedure s. 67 of the Act thereafter took centre stage. The question to be resolved thenceforth redundant was whether the judicial decision meted down by the learned judge,

A though prior to the sentencing, qualified as 'judgment' or 'order' in the context of the latter provision. These two words, 'judgment or order' have been regularly used in courts but for reasons known only to the legislature they have not been defined in the Act. Unless interpreted in the context and spirit of this relevant section
B it may produce interesting results. As Wan Suleiman FJ said in *Tan Kim Leng & Anor v. Chong Boon Eng & Anor* [1974] 1 LNS 167:

> The term "judgment" is something used in different senses. It
C may mean "a judicial determination; the decision of a court; the decision or sentence of a court on the main question in a proceeding, or in one of the questions, if there are several ...

[15] In *Kheng Chwee Lian v. Wong Tak Thong* [1983] 2 CLJ 191; [1983] CLJ (Rep) 195 the court opined:

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> ... The terms "judgment" and "order" in the widest sense may be said to include any decision given by a court on a question or questions at issue between the parties to a proceeding properly before the court (see para 501 of *Halsbury's Laws of England* (4th ed.) vol. 26 at page 237). And at para 550 the following passage
E appears:
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> Subject to appeal and to being amended or set aside, a judgment is conclusive as between the parties and their privies and is conclusive evidence against all the world of its existence, date and
F legal consequences (emphasis added).

[16] *Black's Law Dictionary* defines 'judgment' amongst others as:

> The official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit
G therein litigated and submitted to its determination. The final decision of the court resolving the dispute and determining the rights and obligations of the parties. The law's last word in a judicial controversy, it being the final determination by a court of the rights of the parties upon matters submitted to it in an action or proceeding. ... Conclusion of law upon facts found or admitted
H by the parties or upon their default in the course of the suit. Decision or sentence of the law, given by a court of justice or other competent tribunal, as the result of proceeding instituted therein ... Determination of a court of competent jurisdiction upon matters submitted to it ... Determination or sentence of the law,
I pronounced by a competent judge or court, as the result of an action or proceeding instituted in such court, affirming that, upon the matters submitted for its decision, a legal duty or liability does or does exist.

[17] Perusing the above varied meanings of the phrase 'judgment or order', it is small wonder that Parliament has seen it fit not to supply an exact definition of the two words. In as much as courts prefer certainty of interpretation, s. 67 has empowered it to interpret and figure out whether a particular judicial decision will fall within the ambit of the phrase from the surrounding circumstances. Needless to say the interpretation must fall within the spirit of s. 67 and the framework of the Act.

[18] In the circumstances of the case, as the words in s. 67 were precise and unambiguous, we gave effect to the ordinary or technical meaning of the words in the context of the Act. We were satisfied that these words were not just mere popular words used in normal parlance but technical words, and must mean more than a concluded opinion but carrying a judicial decision which has legal effect. The finding here, which saw the learned judge judicially deciding that the appellants had committed contempt after a full trial, was without doubt a judgment in the context of s. 67. In arriving at the above view, due to the delineation of jurisdiction, hence sidelining s. 50 in the course of our deliberation, the need to allude to the terminology of 'decision' legislated in s. 3 also did not arise as s. 67 is devoid of it. Evidentially a perfected order of the judgement, adduced by the respondent, resolved any lingering doubts.

[19] For completeness, we would like to reproduce the helpful words of NH Chan JCA in *Tycoon Realty Sdn Bhd v. Senwara Development Sdn Bhd* [1999] 3 CLJ 377, which reads:

> It is to be noted that the word "decision" is not used in s. 67(1), so that, there is no compelling reason to refer to s. 3 of the Act for its meanings as is in the case of criminal appeals. That being so, the Court of Appeal has jurisdiction to hear appeals "from any judgment or order" of any High Court in any civil cause or matter, whether made in the exercise of its original or of its appellate jurisdiction". The phrase "from any judgment or order" is not to be restricted to the meaning given to the word "decision" in the current version of s. 3. This is because, in s. 67, civil appeals to the Court of Appeal are from "any judgment or order" of any High Court, whereas, in the case of criminal appeals they are against "any decision" made by the High Court. There is no compelling reason to extend the meaning of the words "any judgment or order" **to mean a judgment or order**

A **which would finally dispose of the rights of the parties.** It is not the business of a court of law to put words into a statutory provision which are not there because to do so would be intruding into the domain of the legislature. (emphasis added).

B **[20]** Based on the above reasons we were satisfied that the decision of the learned judge was appealable and accordingly had dismissed the application (encl. 5a) with costs.

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